

STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE 820 NORTH FRENCH STREET, 1174 FLOOR WILMINGTON, DELAWARE 19801

ORWEN A BARRON CHIEF MAGISTRATE

TE: FEHONE (302) 571-2485

Rescinded

10-17-95

LEGAL MEMORANDUM 83-113

TO:

ALL JUSTICES OF THE PEACE

STATE OF DELAWARE

FROM:

NORMAN A. BARROI

CHIEF MAGISTRAT

DATE:

OCTOBER 12, 1983

RE: APPEAL RIGHTS IN CRIMINAL CASES

Hypothetical

John Doe is charged with Assault in the 3rd degree, a class A misdemeanor, in violation of 11 Del.C., §611. He opts for a trial in Justice of the Peace Court and enters a plea of not guilty. He is tried and convicted. He is sentenced to pay a fine in the amount of \$100, a Victim's Compensation Fund assessment in the amount of \$15, and Court costs in the amount of \$8.50. Additionally, he is sentenced to 30 days incarceration. Immediately following the sentence, he demands that the Court allow him an appeal to the Superior Court for a trial de novo, contending that the aggregate sentence satisfies the appeal threshold. Is an appeal authorized in such a case?

Article IV, Section 28 of the Delaware Constitution of 1897 states, in pertinent part, that:

"...[T]here shall be an appeal to the Superior Court in all cases in which the sentence shall be imprisonment exceeding one (1) month, or a fine exceeding One Hundred Dollars (\$100.00)."

Delaware case law establishes first, that the VCF assessment may not be added to the fine for computing the appeal right of Art. IV, §28 of the Delaware Constitution, and, second, that a fine and a period of imprisonment are independent and, thus, cannot be aggregated for purposes of meeting the appeal threshold.

I.

In the case of <u>Brookens v. State</u>, Del.Super., ______A.2d _____, No. 113, 1983 (decided September 21, 1983), by a <u>per curiam</u> decision, the Delaware Supreme Court was faced with the issue of whether a Court's imposition of a \$100 fine and a 15% VCF assessment under 11 <u>Del.C.</u>, §9012 satisfied the constitutional criteria of <u>Del.Const.</u>, Art. IV, §28 for a criminal appeal to the Superior Court. The defendant asserted that the 15% VCF assessment on a criminal fine of \$100 amounted to a fine in excess of \$100 and hence was appealable to the Superior Court. The Supreme Court disagreed with defendant's contention:

"Section 9012(a) 1 requires a court to exact a 15% 'penalty assessment' on a 'fine,

Subsection (a) of §9012 (part of the Victim's Compensation Law), captioned "Penalty assessment" provides:
"In addition to, and at the same time as, any fine is assessed to any criminal defendant, there shall be levied an additional penalty of 15% of every fine, penalty and forfeiture imposed and collected by

penalty or forfeiture' imposed for a criminal offense. While the assessment is computed as a percentage of any fine, the assessment is denominated as a 'penalty'; and the penalty is expressly stated to be imposed '[i]n addition to . . . any fine [that] is assessed to any criminal defendant.' Further, the penalty assessment operates independently of any fine, for suspension of a fine does not affect the penalty assessment. Finally, the declared purpose of the Act creating the assessment is to provide 'compensation for innocent victims of crime.' 59 Del.Laws, c. 519. Therefore, the assessment imposed by §9012 is compensatory and not punitive in nature.

Accordingly, we find a clear legislative intent that the 'penalty assessment' provided by §9012(a) not represent a fine or an increase in fine otherwise imposed for purposes of determining a constitutional right of criminal appeal to Superior Court under Article IV, §28.

The Superior Court's dismissal of defendant's appeal is affirmed."

II.

In the case of Marker v. State, Del.Supr., 450 A2.d 397 (1982), the Delaware Supreme Court examined Del.Const., Art. IV, $\S11(1)$ (b) in deciding whether to allow an appeal of a misdemeanor conviction from Superior Court. The wording found in Art. IV, $\S11(1)$ (b) is virtually identical to the wording found in Art. IV, $\S28$.

^{1 (}continued)
the courts for criminal offenses. Where multiple offenses are
involved, the penalty assessment shall be based upon the total fine
for all offenses. When a fine, penalty or forfeiture is suspended,
in whole or in part, the penalty assessment shall not be suspended."

Pursuant to Art. IV, §11(1) (b), the Supreme Court has jurisdiction to receive appeals from the Superior Court in criminal causes in which the sentence is imprisonment exceeding one month or fine exceeding \$100.

Thus, the <u>Marker</u> case is instructive as to the meaning of Art. IV, §28. In <u>Marker</u>, the sentence imposed following a Superior Court conviction on a charge of third degree assault was a fine of \$100 and a 30 day period of incarceration. The defendant docketed an appeal in the Supreme Court and the State thereafter moved to dismiss the appeal on the ground that the penalty imposed by the Superior Court failed to meet the Supreme Court's jurisdictional requirements for criminal appeals under Art. IV, §11(1) (b). The Supreme Court agreed and dismissed the appeal:

"Turning to the assault conviction, defendant argues that the \$100 fine coupled with the 30-day suspended sentence constitutes both 'a fine exceeding \$100' and 'imprisonment exceeding one month.' However, we conclude that neither the \$100 fine nor the 30-day suspended jail sentence imposed by Superior Court alone suffices to confer jurisdiction on this Court. The fine does not exceed \$100 and the 30-day prison term does not exceed one month as required by Article IV, §11(1) (b).

Constitutional phrases must, if possible, be given their ordinary or plain meaning. See, Opinion of the Justices, Del.Supr., 225 A.2d 481 (1966); Slawik v. Folsom, Del.Supr., 410 A.2d 512 (1979); see also, Balma v. Tidewater Oil Co., Del.Supr., 214 A.2d 560 (1965); Sturgill v. M & M Inc., Del.Supr., 329 A.2d 360 (1974); 16 Am.Jur.2d, Constitutional Law, §85 (1979). The courts have discretion to construe the language of the Constitution only when it is in some way obscure or doubtful in its meaning. Opinion of the Justices, Del. Supr., 290 A.2d 645 (1972). Conversely, where the language is clear and unequivocal, the

 $[\]overline{}^{3}$ The period of incarceration was suspended for probation.

⁴A sentence of 30 days' imprisonment is a sentence of one month for the purpose of interpreting both Art. IV, §11(1) (b) and Art. IV, §28.

Constitution must be held to mean that which it plainly states, there being no room for construction by the courts. Id. We find no ambiguity in Article IV, §11(1) (b) as quoted infra. Therefore, the words found therein must be given the meaning ordinarily ascribed to them. Opinion of the Justices, Del.Supr., 290 A.2d 645 (1972).

Webster's New Collegiate Dictionary (1977) defines 'fine' as 'a sum imposed as punishment for an offense' (emphasis added): 'sum' is defined by the same dictionary as 'an indefinite or specified amount of money.' It follows that no prison term, regardless of its length, increases a fine (sum, specified amount of money) of \$100 to a fine exceeding \$100. 'Imprison' is defined by Webster as 'to put in or as if in prison: CONFINE. . . . ' Accordingly, no fine, regardless of its amount, increases a term of imprisonment (confinement) of one month to a term of imprisonment exceeding one month. Conclusions to the contrary require an unwarranted expansion of the language of Article IV, §11(1) (b).5

In summary, we hold that the constitutional limitation upon this Court's jurisdiction over criminal appeals from Superior Court, apart from sentence of death, requires in cases of multiple convictions or multiple penalties for a conviction: that the penalties for each conviction be either for a term of imprisonment exceeding one month (or 30 days)

Superior Court reached a contrary conclusion in State v. Campbell, Del.Super., 190 A.2d 610 (1963). The case involved Superior Court's jurisdiction to entertain criminal appeals pursuant to Article IV, §28, a provision virtually identical to Article IV, §11(1) (b). Superior Court erred in Campbell by failing to determine whether the language of Article IV, §28 was ambiguous and, therefore, in need of construction before it turned to legislative history to interpret the statutory language. Resort to constitutional history or construction is not appropriate where the language of the Constitution is clear and unequivocal. Opinion of the Justices, Del.Supr., 290 A.2d 645 (1972). Article IV, §28, like Article IV, §11(1) (b), is plain on its face and its literal meaning should have been applied. State v. Campbell is hereby overruled. (This footnote is found as footnote 3 in the Marker decision.)

or a fine exceeding \$100. Each test under $\overline{\$11}(1)$ (b)⁶ of Article IV is independent of the other; and a convicted defendant may not aggregate penalties for purposes of meeting the jurisdictional requirement."

III.

We have seen from the above that the VCF may not be added to the fine so as to meet the constitutional appeal threshold of a fine in excess of \$100. Brookens v. State, supra. Further, we have seen that the fine and the imprisonment provisions of Art. IV, §28 must be considered independently; they may not be aggregated so as to satisfy the constitutional appeal threshold. Marker v. State, supra. Utilizing the Brookens and Marker rationales, we may also conclude that Court costs may not be added to a fine so as to meet the constitutional appeal threshold of a fine exceeding \$100. Court costs cannot be considered as a part of a fine in that Court costs are not a sum imposed as punishment for an offense. Blacks Law Dictionary, Revised Fourth Edition, defines Court costs as fees and charges required by law to be paid to the courts or some of their officers, the amount of which is fixed by law. Unlike a fine, Court costs are not considered to be a penalty. Thus, as with a VCF assessment, Court costs may not be added to the amount of a fine in determining the constitutional right to an appeal under Article IV, §28.

⁶Or under §28 of Article IV.

Appeal rights in traffic cases are different from appeal rights in criminal cases. For a review of the former, see: Legal Memorandum 82-94, dated July 20, 1982, Appeals From Justice Of The Peace Court Traffic Convictions; Legal Memorandum 82-94 (Supplement), dated December 9, 1982, Appeals From Justice Of The Peace Court Traffic Convictions.

MAB: pn

The Honorable Daniel L. Herrmann
The Honorable Grover C. Brown
The Honorable Albert J. Stiftel
The Honorable Robert H. Wahl
The Honorable Robert D. Thompson
The Honorable Alfred Fraczkowski
The Honorable Charles M. Oberly, III
Lawrence M. Sullivan, Esquire
Eugene M. Hall, Esquire
Henry N. Herndon, Jr., Esquire, Pres., Delaware State Bar Assoc.
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